

EDWARD J. MARKEY

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February 23, 2004

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

The Honorable William J. McDonough
Chairman
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

Dear Commissioner Everson and Chairman Donaldson:

I am writing to express my concern over a recent press report indicating that a growing number of accountants and professional tax preparers across the nation are outsourcing tax preparation to offshore workers located in foreign countries (see. Lynnley Browning, "Outsourcing Abroad Applies to Tax Returns, Too," The New York Times, February 15, 2004, Section 3, page 12).

This report indicates that "this year, at least 100,000 tax returns, both federal and state, will be prepared by Indian citizens in places like Bombay and Bangalore." That number is reportedly four times larger than last year. Employing foreign workers to prepare United States tax returns risks compromising the security and confidentiality of tax returns, creates potential threats to individual privacy, and may result in less accurate returns being filed with the IRS. As you know, a tax return may contain information about an individual or corporation that may be very sensitive. In the case of an individual, the tax return includes essential personal data, such as name, address, Social Security number, and information about the individual's income, finances, and debts. In the case of a corporation, the return may contain important information about the companies' finances and business operations. The phenomenon of such tax return information being processed or analyzed by offshore entities raises a number of important legal and regulatory issues, and in order to better understand how each of your respective agencies is addressing these issues, I respectfully request your assistance and cooperation in responding to the following questions:

1. Is there any requirement in the federal tax laws and regulations, or in the rules governing the business conduct of accountants employed by public companies, which require such accountants or other professional tax preparers to disclose to their clients that the

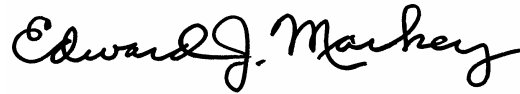
preparation or analysis of their tax return is being outsourced to an offshore person or entity? If not, do you believe that such explicit notice should be required?

2. Is there any requirement in the federal tax laws or regulations, or in the rules governing the business conduct of accountants serving public companies, that would require an accountant or other professional tax preparer to obtain the express written consent of the taxpayer before a tax return or related personal information could be outsourced to an overseas entity or person? Do you believe such explicit notice should be required?
3. The aforementioned press report indicates that some firms have established security procedures to help ensure that any foreign workers employed in the processing or analysis of a tax return. It is also reported that other firms have no such procedures in place and instead may merely email a taxpayer's information to an offshore entity or person for processing. Have either of your agencies reviewed the security policies and procedures used by accounting firms or other tax preparers to assure their adequacy? Is there any penalty for not having such procedures, or for failing to implement them properly?
4. If a person or company engages an accounting firm to prepare their taxes or provides them with tax advice, and then that accounting firm outsources this work to an offshore person or entity, isn't there a risk that the person doing the work may not be knowledgeable about the U.S. tax laws and regulations, or may not have the skills and training of a U.S. CPA? Are you concerned that individuals or companies may be misled into believing that their tax returns are being prepared or analyzed by a CPA, when in fact they are not? Is there any penalty for making such a misrepresentation? If no, should there be?
5. [For the PCAOB] It is my understanding that the PCAOB's has oversight and enforcement authority over accounting firms serving as auditors of public companies. I further understand that the Sarbanes-Oxley Act allows such auditors to perform certain tax services for public companies (if approved by the companies' audit committee). If an PCAOB-regulated auditor outsourced the preparation of tax returns for or the provision of tax advice or tax counseling for a public company, what authority would the PCAOB have over the offshore entity? In your response, please address the case of an offshore affiliate of a registered auditor and the case of an unaffiliated third party acting as a subcontractor of an auditing firm.
6. [For the PCAOB] It is my understanding that the PCAOB has authority under Section 201 of the Sarbanes-Oxley Act to declare, by regulation, certain other non-audit services to be impermissible to be conducted by a registered auditor of a public company. Has the PCAOB considered whether offshoring of tax or certain other non-audit services by an auditor should be subject to further regulation or even prohibition in order to ensure privacy, confidentiality, data security, and facilitate effective law enforcement over such auditors? If so, what action have you taken? If not, why not?
7. [For the IRS] It is my understanding that the U.S. tax laws provide for penalties to be imposed against a tax preparer who aids and abets in the submission of a tax return that understates the tax liability of another person or which engages in certain other fraudulent activities. If the tax preparer who engaged in such activities was an outsourced offshore person or entity, how would the IRS enforce the law and impose penalties upon such a person?
8. [For the IRS] It is my understanding that the U.S. tax law (Sec.7216) bars a tax preparer from "knowingly or recklessly" 1) discloses "any information furnished to him for, or in connection with, the preparation of any such return," or 2) "uses any such information for

any purpose other than to prepare, or assist in preparing, any such return.” How would the IRS enforce this restriction in the case of a tax return which was outsourced to an offshore firm? How would violations of these provisions of the law be enforced against an offshore entity who had subcontracted with a U.S. accounting or tax preparation firm? What recourse would the taxpayer have against the offshore entity that violated their privacy in this fashion?

Thank you for your assistance and cooperation in this matter. Should you have any questions about this request, please have your staff contact Mr. Jeff Duncan or Dr. Michael Bailey of my staff at 202-225-2836.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward J. Markey
Member of Congress